

FRANCKE. Parliamentary Experiment in Germany

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THE PARLIAMENTARY EXPERIMENT IN GERMANY.

[A paper read before the American Historical Association, May 23
1887, by Kuno Francke, of Harvard University.]

THERE is no unconditionally best form of government. A constitution is not, like a mathematical formula, capable of being applied with equal result to different quantities. Its only proper test is its usefulness. It is useful if it represents, with more or less exactness, the political forces which constitute a nation's life.

Which are the forces that constitute the political structure of the German Empire?

It is a remarkable fact that in an age of democratic tendencies gaining ground all over the civilized world, the Germans should have developed a monarchical system which in unity of conception and broadness of influence is almost unparalleled in history. It is all the more remarkable, since the political views of the great German philosophers tend towards radicalism rather than royalism. But a nation's history is determined by facts, not by theories. And in the case of Germany, there is such an overwhelming weight of facts on the side of monarchy, and so strikingly little on the side of democracy, that it would be strange indeed if the latter had not been found too light in the scale. In the long list of great princes of the Hohenzollern dynasty there is scarcely one whose name would not recall sturdy perseverance, unflinch-

ing patriotism and simple-minded loyalty, and there are not a few among them who have left the stamp of their genius and character impressed upon a whole generation. There never was a more intimate union between government and people than that which, since the days of Frederick the Great, has existed between the Prussian crown and the Prussian people. It is a union based upon the principle of public service. Service to the people has always been proclaimed by the Prussian Kings as the fundamental obligation which their inherited dignity laid upon them, and in all decisive moments of its history the Prussian people has been ready to acknowledge the sacred mission of its ruling dynasty. It is the princes of the Hohenzollern house who have raised Prussia from an insignificant electorate to the position of uncontested leadership among the German states; who, first among the Continental powers have established a broad and permanent system of local self-government; who have brought about first the commercial, then the political union of Germany; who have created the German Parliament.

Public services of such an extraordinary merit cannot remain without reward. In Germany, the result has been that the ablest and most energetic minds of the nation to-day are drawn into the ranks of monarchy, and that the weight of public opinion lies at present with the numerous class of government officials. Those who consider democracy as the only rational form of government cannot but deplore this result. But it must be said that the official class in Germany is not a caste in the hateful sense of the word. It has its privileges. But these privileges are open to all; they may be attained by the son of a cobbler as well as by that of a railroad president. The only pre-requisite is education. And is it altogether an irrational state of society in which the natural selection of the fittest is stimulated by a premium offered to education? Whatever may be the merits or demerits of German scholars,

artists and public men of the present day, can it not be said that their remarkable activity in almost every branch of research, production and administration is, at least partly, due to the privileges held out to them by society?

I have spoken of the services rendered by the monarchy in shaping the political union and greatness of Germany. What has been the role of those who aimed at the same end on the basis of democratic principles? Far be it from me to doubt the sincerity of character or earnestness of purpose in the majority of those who in 1848 assembled at Frankfort on the Main as the chosen representatives of the people to deliberate upon the building up of a new and united Germany. Their aspirations were as noble as only aspirations of doctrinaires can be. They were enthusiasts; they were filled with an unbounded belief in the justice of their cause, but, unfortunately, they had very little knowledge of the reality of things. It was a lack of common sense when they expected the governments of the various German states to submit blindfold to a constitution drafted independently by the national assembly. It was again a lack of common sense when they expected the King of Prussia to accept from the hands of the assembly an imperial dignity which, by sharpening the rivalry between Prussia and Austria, could only tend towards dismemberment of the empire. They failed, nobly, to be sure, but not undeservedly. And, unfortunately, it must be added that their failure has not taught them a lesson. They do not seem to understand the signs of the time. Their whole political wisdom is derived from the war which more than two centuries ago was waged by the English Parliament against the despotic and lawless dynasty of the Stuarts; and they have done their best to plunge our people into a similar strife with a government which in self-devotion and public spiritedness falls not behind the greatest names in history. In 1862, when the antagonism between the two great German

powers had become so acute as to make an open rupture appear only a question of time, the democracy, then forming the majority of the Prussian Diet, refused the government the means required for the needed reorganization of the army, thus provoking a conflict, which but for the firm attitude of the ministry might have proved altogether disastrous to the future of the country. In 1866, when, after the victorious war with Austria, the government in order to settle the intestine struggle asked to be granted indemnity for the illegal measures into which it had been forced by the shortsightedness of the late Diet, the democratic votes were cast in the negative, and when, in the following year, through the constitution of the North German Confederation, the first vigorous attempt was made at establishing a powerful German Empire, it was again the sad distinction of the democratic party to remain in a purely negative policy. Prince Bismark told a bitter truth when, some time ago, in commenting upon the new name of German Liberals, recently adopted by the party, he interpreted it as denoting something neither German nor liberal.

If the number of parties in the German Parliament were limited to the two prevailing tendencies of political life, the monarchical and the democratic, the question of political predominance would be comparatively easy. But such is not the case. The Monarchists as well as the Democrats are split up into a number of sections which, although usually working in the same line, may at times strongly oppose each other. The monarchist party comprises at present Conservatives and Imperialists, the main difference between them lying in a greater or smaller readiness to pursue a policy of centralization; the democratic party consists of the so-called German Liberals and the National Liberals, the latter differing from their German Liberal brethren mainly by a willingness to sacrifice party principle to the cause of national

consolidation. But in addition to this sectarianism displayed within the limits of the two most prominent political creeds, there are several other parties which, although not sufficiently strong in themselves to play a leading role, yet by granting or refusing assistance to either of the principal disputants may exert a considerable influence. Such is the position of the Socialists, Alsace-Lorrainers, Poles and Clericals. The Socialists, in spite of their working at present under the disadvantage of coercive legislation, are at every election gaining larger minorities and may, in view of the general drift in Germany toward socialistic institutions, eventually become a power of the first order. The Alsace-Lorrainers and Poles, on the other hand, guided as they are each by their own national sentiments, will lose ground in the same measure as these sentiments are doomed to give way before the advance of Germanization. It is the Clericals who, since the establishment of the new empire, have been alternating with the National Liberals in holding the balance of power. Whenever there arose political questions of a nature as to endanger the internal safety or the international position of the empire, the tide of public opinion turned towards the National Liberals; and whenever there seemed to be a danger that by overstraining the authority of the central government the liberty of the church might be encroached upon, the elections showed a decided increase of clerical votes.

Having thus reviewed the main forces of the political life in Germany, we observe that there does not exist a single parliamentary party which, either by virtue of services rendered to the national cause or by force of numerical compactness, was lifted far enough above the rest to claim the right of shaping the policy of the executive. Two very significant features of our constitution—perhaps the most significant ones—have sprung, as a natural consequence, from this state of things. The first is that the exclusive right of the executive

power is reserved to the crown, as the only permanent and the most effective element of our political organism: the ministers are servants of the crown, not of parliament. The second feature concerns the process of legislation. It is wrong to say—as *has* been said occasionally—that the German Parliament had no initiative. Certainly it has, and not unfrequently it has made use of it. The Jesuit law, for instance, proceeded from the initiative of Parliament. But what the Parliament does not possess, is the power of forcing its will upon the executive, just as little as the executive has the power of forcing its will upon Parliament. All legislation, therefore, in Germany is the product of a *compromise* between the executive and the consultative bodies.

I do not mean to say that these forms of government and legislation are ideal. It is apparent that in the hands of unscrupulous statesmen they may be misused for either causing prolonged dead-locks or masking usurpation. But I do believe that they are the forms best adapted for a country where there is no natural foundation for party government, and I do believe that their inherent dangers can be avoided by a mutual understanding to employ them in good faith and for the sake of common welfare.

Let me try to show, in a few words, how the system of continual compromise between government and parliament has influenced the German legislation of the last seventeen years in the three most important questions of the day, the military, ecclesiastical and social.

The establishment of German unity was brought about, if not caused, by an unprovoked attack upon our national existence. It was nothing short of a duty of self-preservation that the first German Parliament, which assembled after the war with France had come to an end, should try to protect the nation, at least in the immediate future, against the repetition of similar provocations. Consequently, a law was passed

providing that until the year 1874 the peace effective of the German army should remain the same as it had been in 1870, that is to say one per cent of the population, as recorded by the census of 1867. In 1874 the political horizon of Europe had become by no means brighter, the attitude of France was as hostile as ever, and the French army was now by 30,000 men superior to the German forces. It was, therefore, a sign of great moderation on the part of the German government, when in the military bill of 1874 they asked, not for an increase of the army, but simply for securing the present status by making, until further legislation, the draught of one per cent of the population a permanent law. If this provision, known as the so-called Eternate, had been adopted we would have but imitated the example of the French, with the only difference that in France the peace effective consists of one and one-third instead of one per cent of the population. But the German Parliament showed itself more apprehensive of its privileges being curtailed than the French Chamber of Deputies seems to have been. A coalition of Clericals, Liberals and Socialists opposed the governmental bill by demanding an annual settlement of the peace effective. The government found itself confronted by the question: dissolution or compromise? It chose the latter, as suggested by the middle party of the National Liberals: a fixation of the peace effective on the basis of one per cent of the population for a period of seven years. The Septennate was adopted as a diagonal between the Eternate and annual fixation.

You know that this compromise, after having been renewed in 1880 for another term of seven years, some months ago came near ending in a violent conflict. It has been said that this conflict was brought about through the exorbitant demands made by the government in its military bill of November last. But such is not the case. The government did not ask anything which was not in conformity with the stipulations

of previous compromises. It simply asked to establish this compromise for a third term and to carry it out to the full extent of its provisions. By the military law of 1880, the census of 1875, being the last census before that date, had been made the basis of settling the peace effective. Now the government asked to apply the same principle to the proposed renewal of the military compromise, that is to say, to base it upon the census of 1885, as the last census taken before the date of the present bill. This implied an increase of the peace effective, to be sure, but only such an increase as was proportionate to the increase of the population which had taken place since the enactment of the last military law ; by no means an increase in the percentage of men subject to military service. And could there be any serious doubt as to the advisability, nay, urgent necessity, of increasing the German army ? Have the French ever shown the slightest disposition to accept in good faith the results of a war which they, and they alone, were responsible for ? Have they not, during the past seventeen years, incessantly and systematically, prepared for what they call revenge, so that, in spite of the smaller population of France, the French army now outnumbers the German forces by nearly 100,000 men ? And is there not on our eastern borders that monstrous colossus of the Russian Empire, always threatening to strike down upon us and to annihilate our whole civilization ? These are sad reflections, especially sad for a peaceful people like the Germans, who desire nothing but to manage their own affairs in their own way ; but, not to face this state of things, not to prepare for every emergency, would be simply an act of national self-destruction.

The majority of the last Reichstag, again a coalition of Clericals, Liberals and some minor parties, committed this attempt at political suicide. To them there seemed to exist no threatening danger ; they made light of Count von Moltke's

warning that a refusal of the military bill would make war certain ; what they dreaded most was to loose the chance for picking a quarrel with the government. First they refused point-blank any increase of the army. Then, by an outburst of popular indignation convinced of the hopelessness of this course, they changed front and declared themselves ready to grant the demanded increase on condition of changing the septennate into a triennate, that is to say, of fixing the peace effective for three, instead of seven, years. The unfairness of this condition was apparent. Where, as in England or in this country, the whole body of regular troops is constantly kept under arms, it does not matter much whether the number of these forces is regulated for shorter or longer periods. But in a country where the strength and formation, not only of the active army but at the same time of the reserve and landwehr, depends upon the number of the annual levy, the very organization of the military system would be deranged by encroaching upon the stability of this levy. Besides, the septennate had parliamentary tradition in its favor ; it was the result of a compromise between government and parliament ; it had been in existence for fourteen years ; it had worked well ; nothing but willfulness could clamor for its abolition.

So it was perfectly evident that the opposition meant to force the government into an open rupture. The government did not hesitate to take up the gauntlet. On the 14th of January the Reichstag was dissolved. Seven weeks later the National Liberal Conservative majority of the new assembly passed the septennate bill without amendment. The military compromise had once more received the sanction of the people.

The second important question, which, through a series of compromises between government and parliament has been brought nearer its solution, is the regulation of the border

line between the State and the Catholic Church. The declaration of papal infallibility in 1870, although in itself a merely ecclesiastical act, was bound to change the relation of the Catholic Church at least to those countries where the priests, being paid by the government, are as well servants of the State as of the Church. These countries could not but feel endangered by the absolute programme of the infallible papacy ; in these countries the line had to be drawn as distinctly as possible between the priest as priest and the priest as government official. In Prussia this attempt was made through the famous May laws of the year 1873. The May laws confined the disciplinary power of the church authorities to church matters ; they placed the education of the clergy practically in the hands of state authorities ; they obliged the ecclesiastical superiors to inform the government of intended appointments, and reserved to the government the right of vetoing such appointments ; they finally established a royal court of appeal for all ecclesiastical matters. These laws were carried in the Prussian Diet by an overwhelming liberal conservative majority ; they were supported by a strong no-papery movement throughout Germany. It was the time when the appearance of the so-called Old Catholic party revived the hopes of seeing the work of the Reformation taken up anew ; when Döllinger, the Nestor of Germany's Catholic scholars, denounced the jesuitic tendencies of the Roman church, and, applauded by Catholic Munich and all Germany, defied papal excommunication ; when in Bismarck there appeared to have arisen another Luther ; when it seemed as though the political union of Germany was to be followed by the establishment of a national church and the extinction of all religious strife. Such hopes have been disappointed since, and perhaps it would be better had they never been entertained.

From the outset the Catholic bishops declared the May laws a trespass upon the divine rights of the church, nay,

treated them as non-existent. The two most essential provisions of these laws concerned the education and the appointment of priests. They obliged candidates of the ministry to present a certificate of having gone through the curriculum of a German university: not one student of Catholic theology has complied with this provision. They obliged the bishops to inform the State authorities of intended appointments: not one Catholic bishop has submitted to this demand. The consequence was that now the State, that is the government supported by a liberal majority in the Prussian Diet as well as in the German Parliament, proceeded to break the opposition of the clergy by passing a number of coercive laws. The state of things which ensued was deplorable: closing of theological seminaries, refusal of salaries to priests appointed without the consent of the state, conviction and deposition of reluctant bishops and priests, abolition of monasteries and religious orders, prohibition of processions and other ceremonies in which priests not acknowledged by the state might take a part, suppression of all divine service in no less than 1,400 parishes. Such a condition of things could not last, it endangered the very roots of social order and Christian civilization. It was absolutely necessary that Church and State should arrive at terms by which they might live together, if not in friendly relations, at least in the attitude of mutual respect.

In the meanwhile the clerical party had been continually on the increase, and was continually urging the repeal of the May laws. A part of the conservatives had also become alarmed by the disastrous results of the ecclesiastical legislation. In 1879 the clerical conservative coalition had practically control of both the Prussian Diet and the German Parliament. If parliamentary majority ruled in Germany, a complete reaction would now have taken place; the May laws would have been abolished, every supervision of the church by the State would have been suspended. Since, as I said

before, the priests in Germany are at the same time government officials, a reaction of this kind would have meant not freedom of the Church from the State, but submission of the State to the Church. Happily, the prerogative of the crown made such a course an impossibility. The only way of arriving at a satisfactory settlement lay in the line of a compromise between the government and what now appeared as the majority of the legislative bodies, and it is this way which, since 1879, has been entered upon. Persistently as the government refused to accede to a wholesale repeal of the May laws, incessantly demanded by the clerical conservative majority, as ready it showed itself, on the other hand, to eliminate from them all provisions of a distinctly aggressive character. Three times, in 1880, 1882, and 1883, discretionary powers in the application of the May laws were granted to the government by its half-reluctant, half-triumphant opponents, and the use made of these powers went far towards preparing a final reconciliation. Several of the deposed bishops were recalled, the jurisdiction of the royal court for ecclesiastical matters was limited, the nomination of substitutes to vacant parishes was facilitated, the interference of state authorities in theological education was restricted. All these concessions, however, were made with the understanding that the Church, in return, would definitely recognize a general supervision of its educational institutions by the State, and would submit ecclesiastical appointments to the governmental veto. And this, in fact, has been the outcome of the long and memorable struggle. In the ecclesiastical bill, finally adopted by the Prussian Diet on the 27th of last April, all other provisions of the May laws were abandoned, but the sovereignty of the state in supervision of clerical education and appointment has been successfully maintained. A compromise has been concluded, which is equally creditable to either of the combatant parties, and from which we may justly hope a sincere and lasting peace.

I shall not attempt to enter into any discussion of economic or social questions. Let me only say that on this ground, also, the legislation of the German Empire has been following the line of continual compromises between government and Parliament. Two laws of the highest importance show this most conclusively : the indirect taxation law and the law upon insurance of workingmen against accidents.

Until the year 1879 the German Empire had no financial independence. Its own resources, mainly derived from custom duties, the surplus of the telegraph and postal service, and the interests of the imperial invalid fund, were not sufficient to cover its expenses ; the annual deficit had to be made up by contributions from the various States. It was generally acknowledged that these contributions, by fostering centrifugal tendencies, were a serious check to the process of national consolidation, and that they would best be superseded by raising the indirect taxes of the Empire, especially those upon brandy and tobacco. But as to the mode of fixing these taxes, there was a difference of opinion. The government wished to have them fixed, as it is the case in most countries, by a law not limited to time ; the parliamentary opposition, as they had been insisting upon annual regulation of the peace effective of the army, so, also, they demanded an annual determination of the indirect taxes. The final outcome was a very curious compromise, which throws a significant light upon the strength of sectarian feeling even in the representative bodies of our national unity. The determination by permanent law was adopted, but at the same time it was provided that, whenever the income of the new taxes was to exceed the sum of 130 million marks—a sum corresponding approximately to the annual deficit of the Empire—the surplus should not go into the federal treasury, but should be divided among the several States.

The insurance of workingmen against accidents is a part of

that memorable legislation, initiated by the German government to attack the problem of reconstructing the social foundations of the modern State. The objections raised against this bill came from two sides: the Clericals, being opposed to all measures tending towards centralization, condemned the *national* character of the bill, and proposed to leave the insurance legislation to the individual States; the Liberals rejected the proposed engagement of the government itself in the insurance by defraying one-third of the premiums. The law, which, as a middle line between these conflicting tendencies finally was adopted, maintains the national and abandons the governmental character of the insurance, by placing it upon the basis of trade unions. The unions consist of all employers within the same industry throughout the German Empire. These unions undertake the insurance of all their employees with an income of less than 2000 marks; the scale of contributions of the different members being determined by the wages of the employed laborers. Committees of working-men, courts of arbitration, and, as a court of appeal, an imperial board of insurance commissioners, regulate the working of this most remarkable institution.

In one of his last speeches Prince Bismarck half grimly, half humorously observed, he hoped for a time when he himself and his present opponents had gone. Then the German people would enjoy peace. I hope this millennium will not come too soon. In spite of all party strife and tumult we have made, within the last seventeen years, enormous strides towards a consolidation of our national existence, and, as the history of the legislative compromises shows, the very combat has taught our people to respect political opponents, to sacrifice party principles to the welfare of the country, and to seek the strength of one's own position, not in the accumulation of rights, but in the exercise of duties.

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